

Rethinking “Third Generation” Human Rights

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ABSTRACT

Classifying human rights according to “generations” is a form of their characterization. This approach considers civil and political rights as the first generation; economic, social and cultural rights as the second; and a new category named “collective rights” or “rights of peoples” as the third generation. The subject matter of this article is simply an attempt to reconsider the last generation. In this context, having revealed the arguments in the field of those rights, in brief, this paper will discuss whether or not the approach of “generations of rights” can contribute to the protection of human rights in general, and whether it is a natural product of evolution of the theory of human rights.

ÖZET

İnsan haklarının sınıflandırılma biçimlerinden biri de kuşaklara göre yapılan tasniftir. Buna göre, kişisel ve siyasal haklar birinci, ekonomik, sosyal ve kültürel haklar ikinci, kolektif haklar ya da halkların hakları olarak adlandırılan yeni bir kategori ise üçüncü kuşak hakları oluşturur. Makalenin konusu da asıl olarak ileri sürülmüş bulunan bu son kuşağın yeniden değerlendirilmesi denemesidir. Bu bağlamda, üçüncü kuşak haklar söz konusu olduğunda gündeme gelen çeşitli tartışmalar eleştirel yaklaşımla ele alınarak, sonuçta bu kuşağın insan haklarının gelişim sürecindeki yeri ve insan haklarının korunmasına sağlayacağı katkı konusunda birtakım ipuçları verilmeye çalışılmıştır.

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KEYWORDS

Third generation rights, rights of peoples, human rights, right to development, right to self-determination.

ANAHTAR KELİMELELER

Üçüncü kuşak haklar, halkların hakları, insan hakları, gelişme hakkı, self-determinasyon hakkı.

I. INTRODUCTION

The historical origins of the concept of 'human rights' can be found in Ancient Greece, where it was closely tied to the pre-modern natural doctrines of Stoicism. Similarly, Roman law may be seen to have allowed for the existence of a natural law and, with it, certain universal human rights that extended beyond the rights of citizens of Rome, pursuant to the *jus gentium*.¹

The existence of a systematic doctrine of human rights, however, is more recent. Such a doctrine did not exist until the seventeenth century. That is to say, at that time the modernist conception of natural law as implying natural rights started to be analysed in a detailed way. Locke argued in detail that certain rights self-evidently pertain to individuals as human beings, since they existed in the *state of nature* before the *social contract*, where he or she surrendered the right to *enforce* these natural rights to the state, but not the rights themselves.² Locke and others vigorously attacked religious and scientific dogmatism and sought to discover and act upon universal principles governing nature, humanity, and society, including the theory of the inalienable 'rights of man'. That these ideas had great influence on Western countries was evidenced by the US Bill of Rights, the 1776 American Declaration of Independence and the 1789 French Declaration of the Rights of Man and of the Citizen.

The post-Second World War era was signified by a shift towards the protection of human rights under international law. Before the end of the Second World War, which was truly a cornerstone for the internationalisation of the protection of human rights, the treatment of individuals by states was not a subject of international law. It was limited only to the cases of slavery, humanitarian intervention, the treatment of aliens, minorities, and the treatment of prisoners and those wounded in war, "but they were spasmodic, limited in

¹ Burns H. WESTON, 'Human Rights,' **Human Rights Quarterly**, Vol. 6, 1984, 257, at p. 262.

² See Münci KAPANİ, **Kamu Hürriyetleri**, B. 7, Yetkin Yayınları, Ankara, 1993, pp. 30-38; Ahmet MUMCU, **İnsan Hakları ve Kamu Özgürlükleri**, Savaş Yayınevi, Ankara, 1992, pp. 45-51.

scope, and largely political rather than idealistic in motivation."³ Since then, numerous human rights treaties both at a universal and a regional level have been adopted.⁴ Today, International Human Rights Law is indisputably an indispensable part of the body of international law.

The past development of human rights can therefore be summarised as (i) its emergence in theory, (ii) its incorporation into legal form, and (iii) the internationalisation of the protection of human rights; that is, protecting human rights at the international level as well as at the national level.⁵ Today's development of human rights also has two additional aspects. The first is furthering the protection of existing rights at all levels – namely national, regional and universal levels – by means of, *inter alia*, national legislation, interpretation of the provisions of the existing human rights treaties by supervisory bodies established in these treaties, reinforcing the implementation systems, adopting additional protocols to the treaties, and the activities of the non-governmental organisations. In addition, the respect for human rights in the territory of a particular state can be taken into consideration in providing development assistance by the developed countries.

The second dimension of contemporary development of human rights is the extension of the list of human rights. In fact, it is neither surprising nor a direct

³ Matthew C.R. CRAVEN, **The International Covenant on Economic, Social and Cultural Rights: A Perspective on Its Development**, Clarendon, Oxford, 1995, p. 6. See also David J. HARRIS, **Cases and Materials on International Law**, Sweet & Maxwell, 5th edition, London, 1998, pp. 624-626; Bülent ALGAN & Refik TİRYAKİ, "Uluslararası Hukuk Açısından Uluslararası Organizasyonlar ve İnsan Haklarının Korunması: Birleşmiş Milletler Örneği," **Avrasya Dosyası**, C. 8, No. 1, 2002, pp. 92-127, at pp. 107-108. For more detailed information, see Paul Gordon LAUREN, **The Evolution of Human Rights: Visions Seen**, University of Pennsylvania Press, Philadelphia, 1998, pp. 37-71.

⁴ The most important of these treaties are as follows: The Universal Declaration of Human Rights (1948) G.A. Res. 217A (III), G.A.O.R., 3rd Sess., Part I, Resns, 71; International Convention on the Elimination of All Forms of Racial Discrimination (1966) 60 UNTS 195; International Convention on Civil and Political Rights [hereinafter cited as ICCPR] (1966) 999 UNTS 171; International Convention on Economic, Social and Cultural Rights [hereinafter cited as ICESCR] (1966) 993 UNTS 3; Convention on the Elimination of All Forms of Discrimination Against Women (1979), (1980) 19 ILM 33; UN Convention Against Torture and Other Cruel, Inhuman, or Degrading treatment (1984), (1985) 24 ILM 535; and UN Convention on the Rights of the Child (1989), (1989) 28 ILM 1456 at the international level. The most significant human rights treaties at the regional level are: The European Convention on Human Rights and Fundamental Freedoms [hereinafter cited as ECHR] (1953) UNTS 221; European Social Charter (1961) 529 UNTS 89; American Convention on Human Rights (1969) 9 ILM 673; and the African Charter on Human and Peoples Rights (1981) 21 ILM 59.

⁵ See Konrad GINTHER, "The Domestic Policy Function of a Right of Peoples to Development: Popular Participation of a New Hope for Development and a Challenge for the Discipline" in Subrata Roy CHOWDHURY, Erik M.G. DENTERS & Paul J.I.M. de WAART (eds.), **The Right to Development in International Law**, Martinus Nijhoff, Dordrecht/Boston/London, 1992, pp. 61-82, on p. 61; ALGAN & TİRYAKİ, 2002, p. 107.

result of today's understanding of human rights law. On the contrary, human rights law, which is still in an early stage of its development, exists to produce new rights to be added to the list of human rights, the changing and increasing the needs of humans make it necessary. It also makes human rights law dynamic and open to development. However, not every claim finds a place in the list of human rights as a new right.

Attempts to add new rights to the list of human rights have been made that have amounted to great debates. Some of them, on the one hand, had the characteristics of the existing rights and at least could be linked with one of those already existing on the human rights menu.⁶ On the other hand, the so-called third generation of *peoples' rights* or *rights of solidarity* were presented as a new category of human rights.⁷ Expectedly, opposing ideas have arisen in the field of these rights. Moreover, besides the opposing ideas for and against them, conflicting opinions have been set forth by their advocates with respect to, *inter alia*, the rights included in the list of the new category, their content, nature and subjects. These will be discussed below.

What is important in this context is, therefore, that it would weaken the idea of human rights in general if numerous claims or values were indiscriminately proclaimed as human rights. On the other hand, the endless debates and 'hostile' voices against new ideas in this field – including also the idea of a new generation of human rights or the concept of generations in general – may amount to the same result and it could even lead to a deviation from the progressive evolution of the concept of human rights.

Karel Vasak, who introduced and popularised the idea of third generation human rights with Keba M'baye, sought to justify the three generations of human rights with the famous principles, or rather slogan, of the French Revolution of 1789 – *liberty, equality and fraternity*. He contended that the first generation of *civil and political rights* were based on the principle of *liberty*, while the second generation of *economic, social and cultural rights* were based on the principle of *equality* and the third generation of *rights of solidarity* were based on the principle of *fraternity*. He deemed the first generation human rights as essentially negative rights, or rights of abstention,

⁶ For example, the right to food can indeed be linked with the right to life. In its General Comment 6 on the Right to Life, the Human Rights Committee referred to widespread and serious malnutrition leading to extensive child mortality, as a non-fulfilment of the right to life. The right to food, as shown in this example, attracts a further concern on a specific aspect of the right to life, its antecedent. See General Comment 6, Report of the Human Rights Committee to the thirty-seventh Session of the General Assembly, A/37/40, at 93-94.

⁷ The list of third generation rights of Weston includes six rights: (i) the right to political, economic and cultural self-determination; (ii) the right to economic and social development; (iii) the right to participate in and benefit from the common heritage of mankind; (iv) the right to peace; (v) the right to a healthy and balanced environment; and (vi) the right to humanitarian disaster relief. WESTON, 1984, p. 266.

which means that the state has no positive obligation with respect to the realisation of these rights. Expectedly, the second generation of economic, social and cultural rights were positive rights imposing positive obligations upon state authorities. Nonetheless, such alleged differences between the two sets of rights, however attractive these classifications and characterisations are in theory, may lead to a less effective protection of the economic, social and cultural rights in practice. Moreover, many authors rightly emphasise that such alleged differences between civil and political rights on the one hand, and economic, social and cultural rights on the other were essentially ideological, fictional and an oversimplification.⁸ This will be discussed below.

Finally, Vasak contended that there were third generation human rights based on the principle of *fraternity*, or *solidarity*. They were collective, or group rights, in contrast with the rights belonging to the first and second generations, which were individual rights in nature. They were, in his opinion, a response to the phenomenon of global interdependence. Their essential feature was that they could be realised only "by the combined efforts of all social factors: individuals, states, public and private associations, and the international community."⁹

In brief, this paper will discuss whether or not the approach of 'generations of rights' can contribute to the protection of human rights in general, and whether it is a natural product of evolution of the theory of human rights. To this end, the paper will consider the alleged differences between the first and second generations of human rights. As to the third generation of solidarity rights, which are collective, or group rights, unlike the rights of the first and second generations having an individual character, this study will discuss whether the rights of the third generation are 'human rights' or not. Controversial issues such as the subjects of these rights, the concepts of 'people', 'generations of rights', and 'collective rights' will be examined. The paper will also question their relation to existing human rights and their contribution to the protection of the latter.

⁸ See for example Henry SHUE, **Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy**, 2nd edition, Princeton University Press, Princeton, New Jersey, 1996, pp. 51-60; CRAVEN, 1995, pp. 7-16; R. J. VINCENT, **Human Rights and International Relations**, Cambridge University Press, Cambridge, 1986, pp. 11-13; Jack DONNELLY, **Universal Human Rights in Theory and Practice**, Cornell University Press, Ithaca, 1989, pp. 28-45. However, see E. W. VIERDAG, "The Legal Nature of the Rights Granted by the International Covenant on Economic, Social and Cultural Rights", **Netherlands Yearbook of International Law**, Vol. 9, 1978, p. 75.

⁹ Karel VASAK, "Les différentes catégories des droits de l'homme" in Lapeyre, de Tinguy and Vasak (eds.), **Les dimensions universelles des droits de l'homme**, Vol. I, 1990, 303, cited from and translated by Jack DONNELLY, "Third Generation Rights" in Catherine BRÖLMANN, René LEFEBER & Marjoleine ZIECK, **Peoples and Minorities in International Law**, Martinus Nijhoff, Dordrecht, Boston, London, 1993, pp. 119-150, at p. 122, note 13.

II. CONTROVERSIAL CONCEPTS IN HUMAN RIGHTS LAW RELATED TO "THIRD GENERATION" HUMAN RIGHTS

A) The Concept of 'Generations'

Objections can be – and have been – voiced against the term 'generations' on a number of grounds. The first source of these objections was a linguistic one.¹⁰ The ordinary meaning given to the term 'generation' implies that a new generation replaces its predecessor. Each and every generation is then subject to death or to be replaced by a new one. 'Generation' can also remind one of the fact that even if an older generation survives, it is outworn or useless for the present time and the new one is more improved. However, the situation is extremely different in the field of human rights law. The protection of civil and political rights and economic, social and cultural rights (the so-called first and second generations) has become more and more important than ever before and they have neither replaced the other set of rights nor have they been replaced by each other. On the contrary, in practice, the first generation of civil and political rights have been granted more effective protection than the following 'generations' of rights both at the national and the international levels, and they are, despite being named as the first generation, more sophisticated and evolved than their 'successor'.

Secondly, a 'chronological' approach to the evolution of human rights also fails to explain 'generations' of rights. Locke, in his famous *Two Treatises on Civil Government*, recognised three principal natural rights of human beings held in a natural state: life, liberty, and property. What people surrendered to the state through their *social contract* was not those rights, but the enforcement of those natural rights.¹¹ Obviously, the right to property is an economic right.¹² Similarly, later eighteenth century texts, namely the American and French Declarations, do not confine themselves solely to civil and political rights. The 1789 French Declaration on the Rights of Man and the Citizen recognised the rights to life, property, security and *resistance to oppression* in article 2. The right to resistance to oppression was first accepted in the 1776 American Declaration of Independence and more precisely expressed in the French Declaration of 1789. It has never been so clearly formulated again, although it found space in a number of constitutions such as the Turkish Constitution of

¹⁰ See for example Philip ALSTON, "A Third Generation of Solidarity Rights: Progressive Development or Obfuscation of International Human Rights Law?" **Netherlands International Law Review**, Vol 29, 1982, pp. 307-322, at p. 316; Cees FLINTERMAN, "Three Generations of Human Rights" in Jan BERTING et. al., **Human Rights in a Pluralist World**, Meckler, Westport/London, 1990, pp. 75-81, at p. 75-76; DONNELLY, 1993, p. 125.

¹¹ For a short but a good summary on Locke's theory, see KAPANİ, 1993, pp. 31-33.

¹² J. DONNELLY, 1993, p. 126; CRAVEN, 1995, p. 11. It is noteworthy that the right to property used to be seen almost as an absolute right in contrast with today's limited right to property.

1961, which was adopted after a coup d'état and has been considered the most liberal constitution that the Republic of Turkey ever had, including the Turkish Constitution of 1982, which was adopted after another coup d'état.¹³ That right was located in the preamble of the 1961 Constitution. Similarly, although it did not formulate the resistance to oppression as a separate human right, the Universal Declaration of Human Rights referred to it in its Preamble.¹⁴ Surprisingly, the proponents of the third generation rights have not added it to their list of the rights of the third generation. However, it could easily be considered a people's right.¹⁵

For a less controversial example in this context, we have the *right to self-determination*.¹⁶ Although it was not a part of international law before the United Nations Charter,¹⁷ the historic roots of the principle of self-determination can be found in the American Declaration of Independence and the decree of the French Constituent Assembly of May 1790, which referred both to the Rights of Man and to the rights of peoples.¹⁸ Therefore, the core and concrete examples of human rights of all 'generations' can be found in these late eighteenth century revolutionary texts. Consequently, a chronological approach serving as evidence of a 'generations' approach to human rights fails.

¹³ See Bülent TANÖR, *Osmanlı-Türk Anayasal Gelişmeleri*, İstanbul, B. 9, YKY, 2002, pp. 364-431.

¹⁴ The third paragraph of the UDHR is as follows: "Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law".

¹⁵ See KAPANİ, 1993, pp. 301-317. The right to resistance of oppression has been seen as a part of the right to self-determination. Allan Rosas observed that the internal aspect of the right to self-determination implied the right to resistance to oppression. See Allan ROSAS, "The Right of Self-Determination" in Asbjørn EIDE, Catarina CRAUSE & Allan ROSAS, *Economic, Social and Cultural Rights*, Martinus Nijhoff, Dordrecht, 1995, pp. 79-86, at p. 82. Similarly, CASSESE stated that if the state authorities oppress a racial group within its territory, the group has the right to resist such oppression. In his opinion, the group has even been granted a *legal licence* to resort to armed force where certain conditions are available. Anthony CASSESE, *Self-determination of Peoples: A Legal Appraisal*, Cambridge University Press, Cambridge, 1995, p. 154. No matter whether it is considered as a part of the right to self-determination or not, it rebuts the chronological approach which is used to justify the generations of rights.

¹⁶ See CASSESE, 1995, p. 154; Frederic L. KIRGIS, "The Degrees of Self-Determination in the United Nations Era (Editorial Comment)", *American Journal of International Law*, Vol. 88 (1994), pp. 304-310, at p. 304; Christian TOMUSCHAT, *Modern Law of Self-Determination*, Martinus Nijhoff Publishers, Dordrecht, 1993.

¹⁷ Ian BROWNLIE, "The Rights of Peoples in Modern International Law" in James CRAWFORD, *The Rights of Peoples*, Clarendon, Oxford, 1988, pp. 1-16, at p. 5; HARRIS, 1998, p. 113. However, see KIRGIS, 1994, p. 304.

¹⁸ BROWNLIE, 1988, p. 4-5. See also CASSESE, 1995, p. 11 and Oji UMOZURIKE, *Self-Determination in International Law*, Archon Books, Hamden, Connecticut, 1972, pp. 7-11.

The fact that human rights belonging to different categories or 'generations' have been found together in eighteenth century legal texts also refutes the argument that the roots of each generation of rights are to be found in three types of revolution.¹⁹ It is alleged that the first revolution was the French Revolution, which created a first generation of civil and political rights. It was only after the Russian Revolution of 1917 that economic, social and cultural rights gained universal recognition. Finally, the third – alleged – revolution we experienced was 'the emancipation of colonized and dominated peoples'.²⁰ However, the historical development of human rights does not provide us evidence for such a crystal clear relationship between human rights and revolutions. Moreover, it can not explain the situation where the ideas of a revolution are outdated or not accepted anymore. For example, economic, social and cultural rights still survive despite the worldwide collapse of communism. In other words, if the association of the rise of economic, social and cultural rights with the Russian Revolution had been correct, they should have been protected less effectively today than the Soviet times. At least, there should have emerged such a tendency since the early 1990s. This indicates that economic, social and cultural rights are neither the product of nor dependent upon the Russian Revolution. In addition, the growth of economic, social and cultural rights in non-communist European countries pre-dated and continued largely independent of the above-mentioned Revolution, culminating in post-war welfare states with unrivalled records of human rights.²¹

B) 'Collective' Rights

Another alleged difference between third generation human rights and the rights of the first and second generations is that the former are seen as 'collective' rights in contrast to the 'individual' rights of the latter. According to Dinstein,²²

“...a cardinal distinction must be drawn between individual and collective rights granted directly to human beings. Individual human rights (e.g. freedom of expression or freedom of religion) are bestowed upon every single human being personally.

¹⁹ VASAK's theory had been based on three types of revolution. His theoretical underpinning can be found in Karel VASAK, "Pour une troisième génération des droits de l'homme" in SWINARSKI, *Etudes et essais sur le droit international humanitaire et sur les principes de la Croix-Rouge en l'honneur de Jean PICTET* (1984), 837-850, cited from P. H. KOOIJMANS, "Human Rights- Universal Panacea? Some Reflections on the So-called Human Rights of the Third Generation", *Netherlands International Law Review*, Vol. 37 (1990), pp. 315-329, at p. 315.

²⁰ VASAK, 1984, p. 315

²¹ DONNELLY, 1993, p. 128.

²² Yoram DINSTEIN, "Collective Human Rights of Peoples and Minorities", *International and Comparative Law Quarterly*, Vol. 25 (1976), pp. 102-120, at p. 102-103.

Collective human rights are afforded to human beings communally, that is to say, in conjunction with one another or as a group – a people or a minority.”

The nature of collective rights requires, in Dinstein ‘s opinion, that they shall be exercised jointly rather than severally.²³

Rivero²⁴ more precisely contended that what distinguished collective rights from individual rights was that the former could not be implemented except by the agreement of many wills. In addition, collective rights still retained their character as direct human rights, as both authors stressed. The only difference between individual rights and collective rights is how they are exercised: the former can be realised individually whereas the latter can be implemented solely by the attendance of many wills.

Nonetheless, it is not only third generation rights that can be exercised only collectively.²⁵ First of all, a number of human rights belonging to the first and second generations can solely be exercised collectively; that is to say that, although they are individual rights, they are collective in nature in context of their implementation. The right to freedom of association and the right of peaceful assembly are two such rights. In addition, an individual right may at the same time have collective aspects. For example, while freedom of religion is individual, the right to exercise one’s religion in a community with others has a collective dimension. Next, some third generation rights have individual as well as collective implications.²⁶

“The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.”²⁷

²³ DINSTEIN, 1976, p. 103.

²⁴ Jean RIVERO, **Sur le droit au développement**, UNESCO, UN Doc. 55-78/Conf./630/Supp.2 (1978) (translated to English by the Texas International Law Journal).

²⁵ See J. Herman BURGERS, “The Function of Human Rights as Individual and Collective Rights” in Jan BERTING et. al., **Human Rights in a Pluralist World**, Meckler, Westport/London, 1990, pp. 63-74, at p. 72-73; Tim HILLIER, **Sourcebook on Public International Law**, Cavendish Publishers Limited, London/Sydney, 1998, p. 728; Roland RICH, “The Right to Development: A Right of Peoples?” in James CRAWFORD, **The Rights of Peoples**, Clarendon, Oxford, 1988, pp. 39-54, at p. 43.

²⁶ Karel de Vey MESTDAGH, “The Right to Development” (1981) 28 **Netherlands International Law Review**, Vol. 28 (1981), pp. 30-53, at p. 49; Allan ROSAS, “So-Called Rights of the Third Generation” in EIDE, KRAUSE & ROSAS, **Economic, Social and Cultural Rights**, Martinus Nijhoff, Dordrecht, 1995, pp. 247-255, at p. 252; Yozo YOKOTA, “Reflections on the Future of Economic, Social and Cultural Rights” in Burns H. WESTON & Stephen P. MARKS, **The Future of International Human Rights**, Transnational Publishers, Ardsley/New York, 1999, pp. 201-223, at p. 203.

²⁷ See Article 1 paragraph 1 of the UN Declaration on the Right to Development.

The phrase “every human person and all peoples are entitled to ... enjoy ... development” implies that the right to development has an individual as well as a collective implication.²⁸

This is also true for the ‘right to a clean environment’. Although the right to environment has been formulated in the African Charter²⁹ as a right of peoples, the predominant formulation in the domestic laws has been in terms of individuals.³⁰ Moreover, it has been rightly emphasised that the right to environment would be protected more effectively if it is formulated as an individual human right.³¹

Actually, the most remarkable reply to the allegation that the third generation rights solely have a collective character comes from Kéba M’baye,³² who, with Karel Vasak, introduced and popularised the idea of third generation of peoples’ rights:

“Care should be taken, however, not to confuse peoples’ rights and collective rights. The two concepts do not coincide. Human rights may be individual or collective. As for peoples’ rights, although they are collective, they can perfectly well be individual in their application.”

Finally, all human rights, in fact, can be said to have a collective aspect. Donnelly³³ has stated:

“All human rights require collective action if they are to be realized for all. This understanding is explicit as far back as the social contract theorists who first formulated the modern idea of human rights and who saw society and the state largely as instruments for the full realization of the natural rights of man. The fact that collective action is required to realize a right in no way suggests that the right is a collective right.”

²⁸ For the view that the right to development has both individual and collective dimensions, see Mohammed BEDJAOUI, **International Law: Achievements and Prospects**, Paris, UNESCO; Martinus Nijhoff Publishers, Dordrecht/Boston/London, 1991, p. 1053, para. 55.

²⁹ See Article 24 of the African Charter on Human and Peoples’ Rights, (1982) 21 **I.L.M.** 59.

³⁰ Michael R. ANDERSON, “Human Rights Approaches to Environmental Protection: An Overview” in Alan E. BOYLE & Michael R. ANDERSON, **Human Rights Approaches to Environmental Protection**, Clarendon, Oxford, 1996, pp. 1-23, at p. 12.

³¹ J.G. MERRILLS, “Environmental Protection and Human Rights: Conceptual Aspects” in Alan E. BOYLE & Michael R. ANDERSON, **Human Rights Approaches to Environmental Protection**, Clarendon, Oxford, 1996, pp. 25-41, at p. 32.

³² See n. 28 above.

³³ Jack DONNELLY, “The Theology of the Right to Development: A Reply to Alston”, **California Western International Law Journal**, Vol. 15 (1985), pp. 519-536, at p. 521. See also Jean-Bernard MARIE, “Relations between Peoples’ Rights and Human Rights: Semantic and Methodological Distinctions”, **Human Rights Law Journal**, Vol. 7, No. 2-4 (1986), pp. 195-204, at p. 199.

The conclusion, then, must be that the argument that civil and political rights on the one hand, and economic, social and cultural rights on the other, are individual rights while third generation rights are merely collective in nature, is in fact misleading and simply an oversimplification.

C) 'Peoples' Rights'

1. Lack of Definition

Since human rights of the third generation have been identified as the 'rights of peoples', it is of great importance to clarify what constitutes a 'people'. Nevertheless, as if the term has come from out of nowhere, any attempt to find a commonly accepted definition for the term 'people' has been unsuccessful. It has inevitably given rise to opposing views against the concept 'rights of peoples'.

The difficulty of defining that term has been mentioned by a great number of authors. The lack of a satisfying definition, however, may be seen as a result of a number of reasons, some of which may be considered 'justifiable'. First of all, a 'people' is not easily definable, not only in the field of human rights law, but in general. It is quite a hard task to formulate precise definitions in the field of social sciences for such comprehensive terms in general. As to the area of law, first of all, it is still an unsolved question whether or not law is a 'science' or merely a 'discipline' and it will probably remain unanswered even in the long term. But no one today is criticising why vital values such as justice and rights of individuals are guaranteed by such a concept nature of which is still problematic. Moreover, the term 'people' is not the only one that does not have a precise definition in the field of human rights. Finally, and arguably most importantly, a definition of the term 'people' that is made in accordance with a specific peoples' right may not be suitable for the other(s). In other words, 'people' can and, in my opinion, do have different meanings for different rights of peoples.³⁴ The inevitable consequence is the necessity to formulate divergent definitions for each right. This is what the proponents of the rights of peoples must solve, not only to avoid any criticism, but also to avoid the potential danger of confusing the meaning of 'people' with other terms such as 'state'. That the destruction of such confusion would be great and unable to be repaired will be shown below. However, it should be noted that even for specific peoples' rights –including the right to self-determination – we do not have any satisfactory definition. What we have today is just some attempts to determine the characteristics of a 'people' rather than a commonly accepted definition.

³⁴ For the same opinion, see James CRAWFORD, "The Rights of Peoples: Some Conclusions" in James CRAWFORD, *The Rights of Peoples*, Clarendon, Oxford, 1988, pp. 159-175, at p. 170.

2. Attempts at Finding a Definition for 'People'

Human rights of the first and second generations are attributable to 'human' persons. In other words, they are rights belonging solely to human beings. This is so obvious that it leads to neither confusion and misinterpretation, nor is it open to be abused by the state authorities. Moreover, a single definition for a 'human' person is valid for all 'human' rights. However, it has already been mentioned above that there does not exist a widely accepted definition of what constitutes a 'people', and no single definition can be formulated for all alleged peoples' rights.

The definition of 'people' has mainly been approached in the context of the right to self-determination.³⁵ It is simply because among the existing alleged peoples' rights of the third generation, despite the controversial issues as regards its content, the right to self-determination is perhaps the only one which has gained almost international recognition.³⁶ Unfortunately, although both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights of 1966 proclaim the right of all peoples to self-determination, they do not provide any clarification of what a 'people' is.

A 'people' is a kind of collectivity of human beings. Of course, not every group of human beings constitutes a people. It must have some distinctive elements. According to Dinstein,³⁷ a group of people requires 'objective' and 'subjective' elements to be considered a 'people'.

"[P]eoplehood must be seen as contingent on two separate elements, one objective and the other subjective. The objective element is that there has to exist an ethnic group linked by common history. ...[T]here is also a subjective basis to peoplehood. It is not enough to have an ethnic link in the sense of genealogy and history. It is essential to have a present ethos or state of mind."

David Makinson³⁸ has suggested a definition for the purposes of the right to self-determination, including both objective and subjective aspects. He has defined a 'people' as "a collectivity whose degree of cohesion and sense of distinctness (based on elements of descent, language, religion, culture, history,

³⁵ Richard N. KIWANUKA, "The Meaning of "People" in the African Charter on Human and Peoples' Rights", *American Journal of International Law*, Vol. 82 (1988), pp. 80-101, at p. 86.

³⁶ U.O. UMOZURIKE, *The African Charter on Human and Peoples' Rights*, Martinus Nijhoff Publishers, The Hague/Boston/London, 1997, p. 52. Even DONNELLY did not precisely oppose it. See DONNELLY, 1993, p. 133. Elsewhere, however, he viewed the right to self-determination as "essentially a right of individuals acting collectively". DONNELLY, 1989, p. 148.

³⁷ DINSTEIN, 1976, p. 104.

³⁸ David MAKINSON, "Rights of Peoples: Point of View of a Logician" in James CRAWFORD, *The Rights of Peoples*, Clarendon, Oxford, 1988, pp. 69-92, at p. 75.

and others) are deemed 'sufficiently strong to merit' attribution of a right of self-determination."

Definitions such as these and others encompassing objective and/or subjective³⁹ elements were considered and they were brought together in the following:

"A people for the [purposes of the] rights of people in international law, including the right to self-determination, has the following characteristics:

(a) A Group of individual human beings who enjoy some or all the following common features:

- (i) A common historical tradition;
- (ii) Racial or ethnic identity;
- (iii) Cultural homogeneity;
- (iv) Linguistic unity;
- (v) Religious or ideological affinity;
- (vi) Territorial connection;
- (vii) Common economic life.

(b) The group must be of a certain number who need not be large (e.g. the people of micro States) but must be more than a mere association of individuals within a State.

(c) The group as a whole must have the will to be identified as a people or the consciousness of being a people- allowing that groups or some members of such groups, though sharing the foregoing characteristics, may not have the will or the consciousness.

(d) Possibly the group must have institutions or other means of expressing its common characteristics and will for identity."⁴⁰

This is the most encompassing definition available. However, it is debatable whether that definition can apply in every situation. Can the residents of an island belonging to a nation-state, for example, be deemed as a people with respect to right to development? That island is both far from the mainland and strategically unimportant; it can not develop as a result of the policy of the related state. The residents of the island are not a separate ethnic group. They

³⁹ ILO Convention concerning Indigenous and Tribal People in Independent Countries (Convention No. 169) 1989, (1989) 28 *ILM* 1382, used the term 'peoples' instead of 'populations' that had been used in Convention No. 107 (1957), which came into force on 2 June 1959. According to Article 1 (2) of the Convention No. 169, 'self-identification' is a 'fundamental criterion for determining the groups'.

⁴⁰ Final Record and Recommendations of an International Meeting of Experts on the Further Study of the Concept of the Right of People for UNESCO, 22 February 1990, SNS-89/CONF. 602/7.

claim that they can not enjoy their right to development as a result of discrimination of their state. They have almost all of the characteristics included in the above-mentioned definition. Therefore, they must constitute a people. However, the same definition at the same time implies that they are not a people, but the part of the nation, which actually constitutes the people in this example. Obviously, the definition is ambiguous. When the right to development in the example is replaced by the right to self-determination, the uncertainty would still remain in the case of the application of the definition. Now that the definition has reached a deadlock, another definition, or rather, another approach is needed to avoid the uncertainty.

The example above may seem very abstract; actually it is not. On the contrary, the reality is even more complicated. Peoples of a great number of countries are suffering from ill-planned development policies of their states, which leads to an imbalance of development between different regions of their countries. In many countries, all economic, commercial and industrial activities are gathered in certain cities or regions while other cities or regions remain highly underdeveloped. Moreover, unlike our isolated island example, such underdeveloped regions are not so easy to distinguish as a result of heterogeneity of developed areas within the country. Apparently, the definition needs a further study.

Kiwanuka's observation that the term 'people' was given different meanings in the African Charter on Human and Peoples' Rights, which reflects a different approach to that matter, also shades the attempts to formulate a single definition for all rights of peoples.⁴¹ In his paper, Kiwanuka studied four meanings of 'people':

“(A) all persons within the geographical limits of an entity yet to achieve political independence or majority rule;

(B) all groups of people with certain common characteristics who live within the geographical limits of an entity referred to in (A), or in an entity that has attained independence or majority rule;

(C) the state and the people as synonymous;

(D) all persons within a state.”⁴²

Moreover, he added that there were instances in the Charter where 'people' referred to more than one of the four meanings, as in the rights to development, peace and a clean environment.⁴³ In my opinion, Kiwanuka's approach – not necessarily his definitions of 'people' – seems more likely to find a solution to the problem, compared with a *single-definition approach*.

⁴¹ KIWANUKA, 1988, pp. 80-101.

⁴² KIWANUKA, 1988, pp. 100-101.

⁴³ KIWANUKA, 1988, p.101.

Hence, despite its great number of advocates, the meaning given to the term 'people' for the purposes of peoples' rights still remains unclear, leading to an uncertainty as to the possessors of these rights. Considering the lack of consensus with respect to the meaning of 'people', which is acceptable for all rights in this category, it can be said that an *individualistic approach*, which is similar to, but not the same as, Kiwanuka's approach, would provide the best solution. Basically, the term 'people' may have different meanings for the purposes of different rights of peoples. It makes it essential to separately analyse each right of peoples and to seek to clarify what is meant by 'people' for that specific right. Secondly, the term 'people' must not be strictly interpreted. In other words, making 'peoplehood' contingent on some requirements that are formidable to meet is not appropriate – at least for certain rights of peoples – if protection of human rights is the ultimate motive. By means of such an attitude towards the right to development of the islanders in the above-mentioned example, it would not be unrealistic to assert that they constitute a people for the purposes of the right to development since the fact that they are discriminated in respect to development by their state distinguishes them from the rest of the nation. But they are a part of a people, not a separate people as to the right to self-determination. It would also be applied to more complex cases mentioned above: an underdeveloped mass of individuals living in the territory of a state can and do form a group – however named; people, social group, or anything else – and deserve full enjoyment of the right to development. Likewise, that individualistic approach can be utilised in other rights of peoples, too. Although that approach can be subject to criticism alleging that it amounts to several definitions for a single concept, and converts the term 'people' to an excessively general conception encompassing all kinds of collectivities, it has already been shown above that a single definition for all situations and all rights of peoples is deficient. As for the second argument, that certain rights of the third generation are not rights belonging merely to 'peoples', this has been rightly observed by even the proponents of the third generation rights. Certain rights can indeed belong to individuals, groups, or other entities, not necessarily and solely to peoples. That is to say, not every group of human beings claiming enjoyment of a third generation right need to be a people. On the other hand, what I mean by 'not to be strictly interpreted' does not mean that every group of individuals can constitute a people. What I mean is that gaining 'peoplehood' must not be dependent upon conditions that are very difficult to fulfil, which the individualistic approach (an approach which accepts every right of peoples independent from others with respect to the meaning of people, its main possessors) requires.

At the end of the day, it is true that rights of 'peoples' need more clarification. However, the primary concern must be the protection of human rights in practice, in real life; not challenging other opinions and seeking to win victories over them, leading only to endless and useless debates on their theoretical, philosophical, or idealistic aspects.

III. THE SUBJECTS OF THE THIRD GENERATION HUMAN RIGHTS

Civil and political rights of the first generation and economic, social and cultural rights of the second generation are human rights that one has simply because he/she is a human being. In other words, the right-holder of these rights is the human individual. It is evidenced by the wording of all international and domestic legal texts using the phrases such as "Everyone", "Every human being", and "No one". The duty-holders of these rights are, states. Especially under international law, the protection of civil, political, economic, social and cultural rights are primarily held by states. The states are obliged to respect, protect and fulfil these rights.⁴⁴

However, in the field of the third generation human rights, neither the right-holders nor the duty-holders are so easily identifiable. They may be individuals, peoples, or even states, considering the fact that one of these have sometimes been emphasised while the other(s) has been undermined by supporters of rights of the third generation in addition to complete denial of peoples and states as right holders by their opponents. Consequently, the argument on the subjects of human rights of the third generation has constituted another ground of conflicting ideas.

A) Right-Holders of Third Generation Human Rights

The right-holders of both civil and political rights and economic, social and cultural rights are individuals. However, the right holders of the third generation human rights vary. That their beneficiaries may be individuals, peoples and states has been asserted. Expectedly, this forms another source of uncertainty. Multiplicity of the beneficiaries is not the only problem, however. A number of authors have stressed their individual aspect while others have emphasised their collective dimension, observing them as rights of peoples or rights of states rather than rights of individuals. In addition, for each right of the third generation, those who possess it may be different from the other(s), which is yet another uncertainty – or at least lack of precision – in this area. Considering selected rights of peoples, namely the right to development and to self-determination, both of which have been subject to a sufficient body of debates, would illustrate that that conclusion is correct.

⁴⁴ See the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, Maastricht, 22-26 January 1997, paragraph 6. SHUE suggested that three types of duties correlated with every basic human right: duties to avoid depriving, duties to protect from deprivation and duties to aid the deprived. See SHUE, 1996, pp. 51-60.

1. The Right to Development

Article 1 paragraph 1 of the UN Declaration on the Right to Development⁴⁵ describes the right to development as "an inalienable human right by virtue of which every human person and peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development". Article 2 of the same Declaration further explains the subjects of the right to development:

(1) The human person is the central subject of development and should be the active participant and beneficiary of the right to development.

(2) All human beings have a responsibility for development, individually and collectively, taking into account the need for full respect of their human rights and fundamental freedoms as well as their duties to the community, which alone can ensure the free and complete fulfilment of the human being, and they should therefore promote and protect an appropriate political, social and economic order for development.

(3) States have the right and duty to formulate appropriate development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting there from.

The text of the Declaration reflects the approach of the overwhelming majority of developing and socialist countries where development was a right of individuals, peoples and states.⁴⁶ However, it has also been asserted that all that is proclaimed in the Declaration is development as an individual human right.⁴⁷ Finally, it has been seen as a right of the State or of the people, rather than the right of the individual.⁴⁸

The formulation of the right to development in the African Charter is different from the one in the UN Declaration, as its wording suggests the right to development as a right of peoples in its article 22, paragraph 1:

⁴⁵ UNGA Res. 41/128, 4 December 1986.

⁴⁶ Ian BROWNLIE, *The Human Right to Development / Study Prepared for the Commonwealth Secretariat*, Commonwealth Secretariat, London, 1989, p. 16, para. 32; R.N. KIWANUKA, "Developing Rights: The UN Declaration on the Right to Development", *Netherlands International Law Review*, Vol. 35 (1988), pp. 257-272, at p. 262. For a good summary of recognition of the right to development by the United Nations, see Milan BULAJI, *Principles of International Development Law: Progressive Development of the Principles of International Law Relating to the New International Economic Order*, Martinus Nijhoff Publishers, Dordrecht/Boston/London 2nd revised ed., 1993, pp. 360-375.

⁴⁷ James CRAWFORD, 1988, p. 173. He added that following the adoption of the Declaration by the General Assembly, he observed no sufficient acceptance or articulation of the right to development as a peoples' right to qualify it as such. See pp. 173-174.

⁴⁸ BEDJAOUI, 1991, p. 1053, para. 55.

All *peoples* shall have the right to their economic, social and cultural development with due regard to their freedom and identity in the equal enjoyment of the common heritage of the mankind.⁴⁹

This formulation must be considered as the product of an understanding of human rights which is peculiar to that continent. The African Charter, as its drafters intended, reflects the idea of an 'African conception of human rights' based on the 'African philosophy of law', which can meet the needs of that part of the world.⁵⁰ In Africa, a human person is not seen as "an isolated and abstract individual, but an integral member of a group animated by a spirit of solidarity",⁵¹ in contrast with the atomistic view of the western world regarding an individual as locked in a constant struggle against society for the redemption of their rights.⁵²

Apart from that difference between the legal texts, divergent opinions also exist in the academic plane. Mohammed Bedjaoui, for example, has emphasised a 'state' as a beneficiary of the right to development.⁵³ Although he has accepted the right to development as a right of individuals, he added that the right to development could not be an individual human right unless it was first a right of the people or the state.⁵⁴ Bedjaoui's attitude towards the right to development is therefore, monistic.

Espiell, who observed the right to development as both an individual and collective right, suggests a dual approach towards the subjects of the right to development, depending on how that right is viewed, collective or individual.⁵⁵ Sieghart goes further and recommends definitions of two rights to development: an individual's right to development and a states' right to development.⁵⁶ Donnelly, on the contrary, stresses that the right to development as a right of peoples could be logically possible only if social membership was seen as an

⁴⁹ See note 29 above. Emphasise added.

⁵⁰ Robert D'SA, "Human and Peoples' Rights: Distinctive Features of the African Charter", *Journal of African Law*, Vol. 29 (1985), at pp. 73-74.

⁵¹ B. Obinna OKERE, "The Protection of Human Rights in Africa and the African Charter on Human and Peoples' Rights: A Comparative Analysis with the European and American Systems" *Human Rights Quarterly*, Vol. 6 (1984), at p. 148.

⁵² KIWANUKA, 1988, p. 82.

⁵³ Mohammed BEDJAOUI, "Some Unorthodox Reflections on the Right to Development" in Francis SNYDER & Peter SLINN, *International Law of Development: Comparative Perspectives*, Professional Books, Abingdon, 1987, pp. 87-116, at pp. 89-90.

⁵⁴ BEDJAOUI, 1987, p. 90. Brownlie supports Bedjaoui's opinion. See BROWNLIE, 1989, para. 34, at p. 16.

⁵⁵ Héctor Gross. ESPIELL, "The Right of Development as a Human Right", *Texas International Law Journal*, Vol. 16 (1981), pp. 189-205, at p. 198.

⁵⁶ Paul. SIEGHART, *The Lawful Rights of Mankind: An Introduction to the International Legal Code of Human Rights*, Oxford University Press, Oxford/New York, 1986, p. 166.

inherent part of human personality, *and* if it was argued that as part of a nation or people, persons held human rights substantively different from, and in no way reducible to, individual rights.⁵⁷ In his opinion then, only rights that are reducible to individuals can be 'human' rights. He accepts that groups, including nations, even peoples, can and do hold rights, but the rights they hold are not 'human' rights.⁵⁸ He does not see any necessary link between the rights of individuals and the rights of the groups of which they form a part.⁵⁹ Bedjaoui's reply to that Donnelly's allegation is straightforward: he asserts that the tendency to restrict the enjoyment of the right to development to the individual level alone is a *trap* which complicates the attempts to place the right to development in human rights.⁶⁰

However, the opponents of the third generation rights, as a reply to that argument, imply that introducing peoples' rights into the human rights arena itself complicates the attempts to protect individual human rights of the first and second generation. To a large extent, they are not, in my opinion, wrong. The classical understanding of human rights has its roots in the seventeenth century and it has been evolving since then. This classical doctrine of human rights is not against newly emerging human rights since it signifies the progressive evolution of the theory. It simply requires the active and passive subjects (right holder and duty-holder) of the new rights to be as clear as they are in the existing rights. As expected, peoples' rights of the third generation do not fulfil that requirement. Not only individuals, but also peoples and even states are deemed as the subjects of those rights, and of the right to development in particular. Moreover, with respect to the right to development, one of its subjects has sometimes been emphasised,⁶¹ or the right has been split into two by the scholars as shown above. The outlook of the discussions on the beneficiaries of the right to development concludes that there is uncertainty and a lack of consensus even among the proponents of that right. How they can exercise their right to development is another question without a satisfactory answer. This will be discussed below.

The discussions emanating from the term 'people' have already been mentioned above, giving emphasis to the vagueness of its definition, leading to the difficulty of clarifying the holders of the rights of peoples. Another objection can be raised against 'people' as the subject of peoples' rights in the

⁵⁷ Jack DONNELLY, "In Search of the UNICORN: The Jurisprudence and Politics of the Right to Development", *California Western International Law Journal*, Vol 15 (1985), pp. 473-498, at pp. 494-495.

⁵⁸ DONNELLY, 1985, pp. 497-498.

⁵⁹ DONNELLY, 1993, p. 136.

⁶⁰ BEDJAOUI, 1987, pp. 90-91.

⁶¹ See BEDJAOUI, for example. Although he accepts that the right to development is a right belonging to individuals, peoples and states, he ignores an individual's right to development as shown above.

African Charter. The idea that traditional African society shows some divergence from Western style social organisation “by placing more emphasis on the community rather than on individuals within it”⁶² and that a human person is not isolated, but an integral member of a group⁶³ are open to criticism. Anthropology has proved that human beings, since they emerged, have lived in the forms of different levels of society – clans, tribes, nations, etc. In other words, a human being is a human being everywhere in the world and he/she has always been an integral part of the society to which he/she belongs. This is not peculiar to Africa only. That is to say, there can in fact be differences regarding the conception of human rights between Africa and other parts of the world, but it is not the relationship between the human person and his society which determines it, since it is more or less the same in both Africa and the Western world. If it is said that it is society which is emphasised in the African conception of human rights, while the individual is primarily protected in Western tradition, a very dangerous conclusion detrimental to fundamental rights of an African individual follows: contrary to Europe, in Africa, interests of individuals can always be sacrificed for the ‘holy’ interests of the society and the state. A so-called ‘African conception of human rights’, interpreted in this way, justifies the ill-treatment of individuals by their states for ‘exalting’ their peoples. Therefore, an ‘African’ understanding of human rights has the high risk of being abused to legitimise the oppression of individuals by the ruling class.⁶⁴

An emphasis on people rather than individuals in the African Charter is more understandable when we look at the *travaux préparatoires*. The drafters had to face some ideological challenges. Many African states denied the concept of civil and political rights, even some of them, namely the socialist ones, rejected the idea of granting rights to individuals in the Charter. The result is, despite the incorporation of civil, political, economic, cultural and social rights in the text of the Charter, many clawback clauses, but no provision for non-derogable rights. That most African states are still in the process of ‘nation-building’⁶⁵ does not and can not legitimise undermining the individual human person and his/her fundamental rights and freedoms for society’s interests and peoples’ rights. Moreover, state practice in Africa indicates that it is the state that seeks to enjoy peoples’ rights and the right to development in particular, on behalf of their peoples. In the light of these considerations, the view of Mohammed Bedjaoui, who views the right to development as a fundamental right, the alpha and omega of human rights, “in short ...the *core right* from which all others stem”,⁶⁶ is, in my opinion, open to criticism. His

⁶² D’S.A. 1985, p. 74.

⁶³ OKERE, 1984, p. 148.

⁶⁴ D’S.A. 1985, p. 74.

⁶⁵ D’S.A. 1985, p. 74.

⁶⁶ BEDJAOU, 1991, p. 1182.

emphasis on the state as the beneficiary of the right to development is also questionable.

a) An Individual's Right to Development

Another question concerning the right-holders (active subjects) of rights of peoples in general and the right to development in particular is how they can enjoy it. The UN Declaration on the Right to Development does not provide a hint about the right to development as a right of individuals, other than mentioning an individual as one of the possessors of the right. Bedjaoui asserts that the right to development can only be a human right indirectly.

"Evidently, right to development is a human right, *since the individual is the ultimate beneficiary of international legal forms*; it is nonetheless true that this right is proclaimed within the defined framework of a system which operates among states."⁶⁷

Sieghart defined an individual's right to development as his right to take part in and benefit from the development process in which he can enjoy, exercise and utilise all his human rights – whether economic, social, cultural, civil or political – without any discrimination. That Bedjaoui views the right to development as the core right from which all others stem has already been mentioned above.⁶⁸ Is it wrong then, to conclude that an individual who can fully enjoy all his civil, political, economic, social and cultural rights at the same time enjoys his right to development or vice versa? If that is the case, the right to development as a right of individuals is simply an aggregate of existing rights and it does not add something new to the present scene of human rights and to the protection they provide.⁶⁹

b) Peoples' and States' Right to Development

It has been shown above that the right to development, as a right of individuals, is no more than a synthesis of the existing rights of individuals. As to the right to development as a right of peoples, the first shortcoming originates from the vagueness of the term 'people'. A more complex problem arises with respect to identifying a competent body that can claim that right of the people on behalf of that people. A people, however defined, do not have a legal personality and therefore requires such an organ in order to claim its right to development. The individualistic approach towards the term 'people' may be helpful in defining the term as the possessor of the right to development or any other right of the third generation, but it does not enlighten us in identifying the representative of the people. So, the question is: who will speak on behalf of

⁶⁷ BEDJAOUI, 1987, p. 90. Emphasis added.

⁶⁸ See note 66, above.

⁶⁹ See MESTDAGH, 1981, p. 49 and DONNELLY, 1993, p. 138.

the people? The state? It has already been shown above that the word 'people' is extremely ambiguous. A people may refer to all of the population of a state, but that is only one meaning that can be given to that term.⁷⁰ What about where what is meant by 'people' is something other than 'everybody within a state'? States may not always represent all peoples within their territories and sometimes interests of a government of a state may be different from and even contrary to the interests of its people. Hence, a 'people' and a 'state' are quite different entities and, confusing them can harm the interests of both individuals and peoples.

At the international level, can it be said that all states have equal right to development, that developing and underdeveloped states are given priority over the developed ones concerning the development process? Mestdag⁷¹ has stated:

"[I]t is one of the essential characteristics of international law on human rights that it not only imposes an obligation on states to implement those rights within their own boundaries but also renders states co-responsible for implementation in other countries. This co-responsibility involves not only supervision and correction; where a state falls short of the international standard because it lacks the necessary resources, or where the government does not possess the means and power to mobilize in sufficient measure the resources available in the country to that end, other states have the duty to help it to reach that standard with the aid of their more extensive resources. This duty to assume co-responsibility consequently constitutes the basis for the inter-state component of the right to development. *The bearer of the right is the impoverished state; the bearer of the obligation is the state which is in a position to provide assistance.*"

Since whether the developing states may oblige the developed countries to provide development assistance will be discussed below, suffice it to say here that such a duty of developed states is at least a contentious one. Evidently, the right of states to development is not a matter of human rights law; states' right to freely formulate appropriate national development policies aiming at the constant improvement of the well-being of the whole population and of all individuals⁷² is not a human right, and especially states' right to development assistance, which is deemed as a complementary of the right to development of states, can never be seen as a 'human' right. They can only be related with international relations or international politics. The underlying purpose of presenting them as 'human' rights appears to be the result of attempts to isolate these demands from international politics, which is based on 'interests' and 'power'. Nevertheless, this in itself is politicisation of human rights law. Indeed, states have the right to development, but it is not a human right. Human

⁷⁰ See note 41 above. See also Carlos Santiago NINO, *The Ethics of Human Rights*, Clarendon Press, Oxford, 1991, pp. 236-240.

⁷¹ MESTDAGH, 1981, pp. 52-53. Emphasis added.

⁷² UN Declaration on the Right to Development, Article 2 (3).

rights law must be protected against such degeneration caused by its politicisation.

2. Right to Self-Determination of Peoples

The right to self-determination of peoples most definitely found its wording in Article 1 of the Covenants of 1966 with the identical wording:

"All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."⁷³

Self-determination first began to be accepted as a legal right in the context of de-colonisation. Its later development signified a modification in its substance. Besides self-determination as a principle of international law, which is today a part of customary international law, it has also been considered a human right. Self-determination has been placed on the list of human rights of the third generation by the proponents of the generations approach to human rights. Today, it is accepted that the right to self-determination is applicable not only to peoples under colonial rule, but also to peoples under foreign or alien domination.⁷⁴ It does not mean the right to independent statehood or the right to secession. Respect to territorial integrity of states is the main principle.

"[T]he right to self-determination is applicable to peoples under alien or colonial domination and foreign occupation, and should not be used to undermine the territorial integrity, national sovereignty and political independence of States."⁷⁵

The African Charter, having emphasised absolute equality of all peoples in its Article 19, formulated the right to self-determination, including the right to existence of peoples (Article 20 (1)).⁷⁶ Paragraph 3 was challenging, it

⁷³ Article 1 (1) of International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights. See also Article 2 (1) of the Vienna Declaration and Programme of Action 1993, UN Doc. A/CONF.157.23 hereinafter cited as the Vienna Declaration). The UN Charter too contains references to the right to self-determination. See Article 1 (2) and Article 55. In addition, HIGGINS views Article 73 (b) and 76 (b) as implying that right. See Rosalyn HIGGINS, **Problems and Process: International Law and How We Use It**, Clarendon Press, Oxford, 1994, pp. 113-114.

⁷⁴ See Articles 12 and 13 of the Final Declaration of the Regional Meeting for Asia of the World Conference on Human Rights, 2 April 1993 (hereinafter cited as Bangkok Declaration), and Article 2 of the Vienna Declaration. See also DINSTEIN, 1976, p. 108. For the meaning of 'foreign domination', see CASSESE, 1995, pp. 92-99.

⁷⁵ Article 13 of the Bangkok Declaration. See also Article 2 (3) of the Vienna Declaration.

⁷⁶ Article 20 of the African Charter is as follows:

"1. All peoples have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.

incorporated a right of oppressed peoples to assistance in their liberation struggle from other States party to the Charter.⁷⁷

Evidently, the right to self-determination of peoples appears to be a principle of international law. However, the question of what constitutes a people as the possessor and claimant of the right still remains unanswered. It is said that that right of peoples has been seen in the context of de-colonisation process, referring to the right of peoples under colonial domination. In other words, the peoples under colonial domination were viewed as the holders of that right. That understanding was dominant in the period between the post-World War II and the 1970s. In my opinion, the fact that the borders of most of today's African countries, colonies of the past, were drawn according to the abstract notion of latitudes and longitudes opens the practice of the application of the right to self-determination to criticism. As a result of that division, members of the same ethnic, racial and religious groups were divided by artificial borders. Populations from different origins found themselves as the nationals of the same state. Actually, what they only had in common was that they had lived together under the authority of the same colonial power. In other words, they did not possess the 'subjective' requirement of peoplehood, besides the lack of a number of 'objective' conditions. Today, African countries are still in a process of nation-building, partly as a consequence of the colonial division. This is, at the same time, an important reason for widespread ethnic conflicts on the African continent.

Since the 1970s, groups within the existing 'metropolitan' states have asserted that they should possess the right to self-determination as well as the peoples of the colonies. It seems today more like a matter of 'internal' self-determination.⁷⁸ Cassese⁷⁹ has stated:

"[T]he primary means of implementing internal self-determination requires the co-operation of the sovereign State in which the 'oppressed' people live. The oppressive State must grant the group exercising its right a means of taking part in the political decision-making process or, failing this, of choosing some part of 'autonomous' internal status."

2. Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community.

3. All peoples shall have the right to the assistance of the States parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural."

⁷⁷ See CASSESE, 1995, pp. 154-155, for the aid to people in their liberation struggle from other states.

⁷⁸ Article 13 of the Bangkok Declaration reflects an anxiety of the participants. Considering the demands of the minority groups within their territories, they stressed in their Declaration that the right to self-determination can not be enjoyed detrimental to territorial integrity, national sovereignty and political independence of states.

⁷⁹ CASSESE, 1995, p. 150.

Apart from identifying the group within a state as a people, which is the common problem for all rights of peoples, another question regarding that group is how it can claim its right to self-determination. The groups need organs to speak on behalf of them. According to Cassese, such groups are entitled to claim self-determination on condition that there exists a representative organisation capable of acting on behalf of the entire group.⁸⁰ However, it is not always possible to form such a body. In addition, groups that are oppressed within their state may not have the opportunity to establish a representative body or legally keep it active. So, is it the conclusion that they do not have the right to self-determination? On the other hand, who is entitled to claim that right in the lack of a competent body? The conclusion should be, therefore, that a competent body representing the entire group is necessary to claim the right to self-determination, but not a condition for the existence of the right itself.

As to 'external' self-determination, Cassese contended that there should be a liberation movement or another type of body representing the whole people.⁸¹ Such bodies are found in the cases of Palestine and Northern Cyprus. Yasir Arafat, the leader of Palestinian Liberation Organization and Rauf Denktas, elected president of the Turkish Republic of Northern Cyprus,⁸² have been representing their Palestinian Arab and Turkish Cypriot peoples in peace negotiations. Similar to the case of internal self-determination, it may be impossible to find such bodies representing the whole people for the purposes of external self-determination. This is the case for Iraqi Kurds, who are allegedly being represented by two main groups, by Barzani and Talabani. Hence, the above conclusion is also applicable to the case of external self-determination.

It is noteworthy that the Human Rights Committee did not entertain individual complaints for alleged violations of the right to self-determination in Article 1 submitted under the First Optional Protocol to the Civil and Political Rights Covenant. In *Kitok*⁸³, Human Rights Committee stated:

"The author of the claim, as an individual, could not claim to be the victim of a violation of the right of self-determination enshrined in Article 1 of the Covenant. ...Whereas the Optional Protocol provides a recourse procedure for individuals claiming that their rights have been violated, Article 1 of the Covenant deals with rights conferred upon peoples, as such."

⁸⁰ CASSESE, 1995, p. 147.

⁸¹ CASSESE, 1995, pp.146-147.

⁸² Turkey is the only state to have recognised the Turkish Republic of Northern Cyprus as an independent state.

⁸³ Case of *Kitok v. Sweden*, Communication No. 197/1985, Report of the Human Rights Committee, UN Doc. A/43/40, at 228.

B) Duty-Holders of Third Generation Human Rights

Every human right imposes a duty. In the course of the development of human rights law, human rights have been seen as imposing obligations. It is natural that every right at the same time implies a duty. There may be obligations of different characteristics, like positive and negative duties. However, the duty-holder has always been the state with respect to rights of individuals. When it comes to the rights of peoples, on the other hand, the duty-holders (passive subjects) of these rights are various: individuals; groups at different levels, including peoples; states; and even the international community.

The responsibility for development has been placed on individuals, groups and states in Article 2 of the UN Declaration on the right to Development. States party to the Declaration have the duty to take steps, individually and collectively, to formulate international development policies with a view to facilitating the full realisation of the right to development.⁸⁴ It implies that states as members of the international community are the duty-holders for the world-wide realisation of the right to development. In addition, other actors at the international level have also been asserted to be other passive subjects of that right. In other words, non-state actors such as the United Nations and its specialised agencies, and even trans-national corporations have been seen among the duty-bearers.⁸⁵

It is not clear, however, what the Declaration on the Right to Development expects of the individual in the discharge of his responsibility for development process. Umozurike's outlook to individual duty to develop implies that this responsibility of the individual is a moral one. In his opinion, there is a duty on every individual to develop and he/she must work towards the improvement of his/her society.⁸⁶ It is not supported by law, and for that reason, it turns out to be just a request rather than a real, concrete obligation. In addition, the duty on the collectivities in the society, including the peoples, to develop, which he envisaged is also merely a moral one:

"There is a duty on every group, however defined, to develop itself along the path of progress."⁸⁷

Hence, it can be said that an individual's and a group's responsibility for the development process has no legal content imposing concrete obligations that are unique to the duty of development on them.

⁸⁴ Article 4 of the Declaration.

⁸⁵ See Subrata Roy CHOWDHURY & Paul J.I.M. de WAART, "Significance of the Right to Development: An Introductory View" in Subrata Roy CHOWDHURY, Erik M. G. DENTERS & Paul J.I.M. de WAART, **The Right to Development in International Law**, Martinus Nijhoff, Dordrecht/Boston/London, 1992, pp. 7-23, at pp. 16-17.

⁸⁶ UMOZURIKE, 1997, p. 60.

⁸⁷ UMOZURIKE, 1997, p. 60.

According to Espiell, passive subjects of the right to development are under a negative generic obligation: they should not "forestall by any means, directly or indirectly, the normal process of development"⁸⁸ since it will be a violation of the right to development. The only possible 'legal' duty they have, in his opinion, is the negative one. Actually, what he suggested is simply the obligation to 'respect' to right to development of other individuals, society and state. Nonetheless, every human right inevitably imposes that negative obligation on third parties, namely other individuals, society and state. Every individual is obliged to respect human rights of others. In other words, the rights of a single individual are restricted by the rights of others. Consequently, the negative duty not to erect obstacles to the enjoyment of the right to development is not a 'newly invented' obligation which is peculiar to the right to development; it is common for all human rights.

In addition, it can be said that the notion of solidarity implies a positive obligation on individuals, social groups and states to co-operate for the enjoyment of the right to development. Marks, like other proponents of human rights of the third generation, considers the notion of solidarity as the key feature of these rights.⁸⁹ On the other hand, like the duty of individuals and social groups to develop, this is as well merely a moral duty which lacks any legal consequence when it is not fulfilled. Ordinary obligations of an individual as a member of the society and a citizen of the state can not be given as example for the solidarity in the context of third generation rights. Every individual has to respect the rights of others, pay their taxes, obey the rules, and so on. Indeed, such obligations imply a strong solidarity within the members of the society and they are reinforced by law. Non-fulfilment results in different levels of legal sanctions. In my opinion, the third generation human rights do not impose on their individual and group duty-holders a further solidarity than that already existed as a result of living in a society under the authority of a state.

States, on the other hand, according to Espiell, besides the negative duty above, have also a positive duty. At the national level, every state has a duty to its citizens to protect and promote their development.⁹⁰ Likewise, the UN Declaration on the Right to Development provides that states should undertake all necessary measures for the realisation of that right.⁹¹ Furthermore, at the international level, it has been said that there is a duty of states to co-operate,⁹²

⁸⁸ ESPIELL, 1981, p. 199.

⁸⁹ See Stephen P. MARKS, "Emerging Human Rights: A New Generation for the 1980s?", *Rutgers Law Review*, Vol. 33 (1981), pp. 435-451. At the same time, he accepts that this notion of solidarity is not peculiar to the rights of peoples, since a minimum of solidarity is essential for the realization of the rights belonging to the first and second generations.

⁹⁰ ESPIELL, 1981, p. 199.

⁹¹ Article 8 (1) of the Declaration.

⁹² See BROWNLIE, 1989, para. 16 (h). P. 9; Roland Y. RICH, "Right to Development as an Emerging Human Right", *Virginia Journal of International Law*, Vol. 23, No. 2, pp. 287-328,

and that the notion of solidarity requires developed countries to provide development aid to impoverished states.⁹³

The duty of states to co-operate at the international level is incorporated in Articles 3 (1) and 4 (1) of the Declaration. Article 4 (2) stresses the importance of rapid development of developing countries, and added that an effective international co-operation was essential in providing developing countries “with appropriate means and facilities to foster their comprehensive development”. This article, however, does not impose on a single developed country to provide development assistance. Hence, the Declaration is silent on development aid to developing countries.

Some commentators have sought to find evidence from other legal texts supporting the view that providing aid is an obligation rather than a voluntary action of developed states. Alston and Quinn for example, assert that Articles 2 (1), 11 (1) and 11 (2) of the International Covenant on Economic, Social and Cultural Rights can be interpreted as giving rise to an obligation on more developed States parties to less developed ones when the latter are prevented from fulfilling their obligations under the Covenant by a lack of resources.⁹⁴ In addition, the Committee on Economic, Social and Cultural Rights, in its General Comment 3, has stated:

“[I]nternational cooperation for development and thus for the realization of economic, social and cultural rights is an obligation of all States. It is particularly incumbent upon those States which are in a position to assist others in this regard.”⁹⁵

Nevertheless, the Committee, in its same General Comment, suggested that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each right was incumbent upon all State parties.⁹⁶ Hence, the Committee accepted that minimum core obligations of State parties for the enjoyment of Covenant rights by their nationals applied irrespective of the availability of resources or any other factors and obstacles.⁹⁷ In other words,

at p. 291; Declaration on the Establishment of a New International Economic Order, G.A. Res. 3201, 29 UN G.A.O.R., Sixth Special Sess. Supp. (No. 1) at 3, UN Doc. A/9559 (1974). However, see Philip ALSTON, 1983, pp. 318-319.

⁹³ The duty to provide development assistance is sometimes linked with all human rights and sometimes directly with third generation human rights and the right to development in particular. Henry J. STEINER & Philip ALSTON, **International Human Rights in Context: Law, Politics, Morals** Clarendon Press, Oxford, 1996, p. 1177. For assistance in the context of the right to self-determination, see notes 76 and 77 above.

⁹⁴ Philip ALSTON & Gerard QUINN, “The Nature and Scope of States Parties’ Obligations under the Covenant on Economic, Social and Cultural Rights”, **Human Rights Quarterly**, Vol. 9 (1987), pp. 156-191, at pp. 186-187.

⁹⁵ Committee on Economic, Social and Cultural Rights, General Comment No. 3 (Fifth Session, 1990) [UN Doc. E/1991/23], para. 14, at p. 9.

⁹⁶ Committee on Economic, Social and Cultural Rights, 1990, para. 10, at 8.

⁹⁷ See the Maastricht Guidelines, paras. 9 and 11, at p. 5.

States party to the Covenant have to meet the minimum standards in whatever conditions they are. The Committee, additionally, observed that the meaning given to the phrase "to the maximum of its available resources" in Article 2 (1) of the Covenant by its drafters referred not only to national resources, but also to those available from the international community through international co-operation and assistance. The *raison d'être* of the Covenant, as the Committee pointed out, is to establish well-defined obligations for States parties concerning the full realisation of the rights enshrined in the Covenant. Nonetheless, it should also be noted that, the *raison d'être* of the state mechanism is, to meet at least these minimum standards. Then, it can be concluded that apart from very exceptional situations, a state, which claims that it can not fulfil its treaty obligations as a result of a lack of resources, has not utilised its available resources effectively. In the light of this fact, even the most permissive interpretation of the Covenant suggests that the duty of developed countries to provide assistance to the countries in need is limited to very exceptional cases in which the state in need, despite all its efforts in good faith, could not provide its nationals even a minimum realisation of the rights enshrined in the Covenant. In addition, the obligation in the Covenant to assist can not be deemed as an aid in the context of development. That obligation is limited only to realisation of a particular Covenant right – or a number of Covenant rights – rather than a wider issue of development problem.

In brief, what is emphasised in international legal texts is the importance of international co-operation rather than the duty to provide development aid. This is the case in the UN Charter as well as the Declaration of 1986.⁹⁸ It does not refer to any formulation of such a duty in Articles 55 and 56. Similarly, an old General Assembly resolution,⁹⁹ which calls upon the developed countries to make assistance available to the developing countries, at their request, does not indicate that such a legal obligation is involved. However, it should be admitted that the word 'cooperation' inevitably requires any means of aid, be it technical, economic or else. As a commentator observed, these international documents may create expectations to be used to maintain pressure on the developed countries to provide development assistance.¹⁰⁰ This may be true, but we need more than 'expectations' to talk about an availability of an obligation. Another opinion is that there is evidence for the state practice about development aid in international law.¹⁰¹

A commonly accepted answer to the question of whether or not there is an international obligation on developed countries to provide development assistance seems unlikely to be found. Nevertheless, there exist more important questions to be answered on that matter. First of all, the relationship between

⁹⁸ See also para. 17 of the Bangkok Declaration.

⁹⁹ G.A. Res. 2158 (XXI), 25 November 1966.

¹⁰⁰ KIWANUKA, 1988, p. 272.

¹⁰¹ See RICH, 1983, pp. 302-314.

development and human rights must be clearly explained. As far as I am concerned, the level of development can be a factor that effects the enjoyment of human rights in a country *to a certain extent*. On the other hand, development should not be deemed as a precondition for the realisation of human rights. Otherwise, governments could justify violations of human rights within their country with their low level of development.

A balanced approach would be considering development, democracy and human rights as a whole, as evidenced by the policy of development assistance adopted by the European Community. For a long time in the course of providing development assistance, it was believed that development assistance alone would be sufficient to stimulate economic wealth and industrialisation among the developing countries, even including the least developed ones. Nevertheless, after almost three decades of unsuccessful implementation of this policy, the European Community has begun to realise that development does not come about by solely economic assistance, but is linked to the observance of human rights, democracy and the rule of law.¹⁰² It confirms the fact that there is a mutual relationship between development and human rights. In other words, not only is development necessary for full realisation of human rights, but also respect for human rights by states is one of the key elements of development.¹⁰³

The other problem in relation to development assistance is whether it is used effectively for the purpose of the development by the recipient or not. Unfortunately, most of the aid thus far has served no developmental aim. However, when both parties – donor and recipient country – behave responsibly, keeping development as the basic goal, it can be of benefit.¹⁰⁴

¹⁰² See B. SIMMA, J. ASCHENBRENNER & C. SCHULTE, "Human Rights Considerations in the Development Co-operation Activities of the European Community" in Philip ALSTON, **The European Union and Human Rights**, Oxford University Press, Oxford, 1999, pp. 572-577.

¹⁰³ See the Resolution of the Council and of the Member States Meeting in the Council on Human Rights, Democracy, and Development of 28 November 1991, Bulletin of European Council, 11-1991, at 2.3.. That resolution clearly favours support for countries which are attempting to institute democracy and improve their human rights performance. However, in the event of grave and persistent violations of human rights, the Community will not preclude taking 'appropriate measures'. Such measures could take the form of confidential or public démarches, modifications of the content of co-operation programmes or the delay of measures necessary for the carrying out of the programmes to the suspension of the co-operation of the state concerned on condition that the measure taken is proportional to the seriousness of the violations of human rights. Paragraph 7.

¹⁰⁴ STEINER & ALSTON, 1996, p. 1136.

IV. THE RELATIONSHIP BETWEEN RIGHTS OF DIFFERENT GENERATIONS

A) Universality, Indivisibility and Interdependence of Human Rights *v.* Alleged Differences Between Them

Today, it is widely accepted that all human rights are universal, indivisible, interdependent and interrelated.¹⁰⁵ Recognition of that characteristic of human rights requires protection and promotion of all human rights with the same intensity. In other words, these principles reject the view that a set of human rights should be given priority over other(s) with respect to their protection and promotion due to their different characters.

The idea of human rights of the third generation relies on the assertions that each 'generation' came about as a result of a revolutionary movement, and that human rights belonging to each generation was different in nature from rights of other generations.¹⁰⁶ These arguments first emerged in relation to civil and political rights and economic, social and cultural rights. Some commentators took the view that only civil and political rights could be called human rights.¹⁰⁷ On the contrary, other jurists, who are more predisposed to a socialist orientation such as Tunkin, gave priority to economic, social and cultural rights over civil and political rights.¹⁰⁸ In addition, that the two groups of rights differ in nature, origin and significance was asserted during the drafting of the Covenants of 1966 by those states advocating different regimes of state obligations imposed on them. However, those opinions are not supported anymore. Today, there is a widespread acceptance that there is no significant difference between the two groups of rights.¹⁰⁹ Consequently, the idea that the right to development has priority over all other human rights¹¹⁰ has no validity as well.

¹⁰⁵ See Vienna Declaration, at 242, para. 5; Bangkok Declaration, Preamble, paragraphs 9 and 10; and article 6 (2) of the Declaration on the Right to Development.

¹⁰⁶ See introduction.

¹⁰⁷ For the criticism of that opinion, see G.J.H. van HOOFF, "The Legal Nature of Economic, Social and Cultural Rights: A Rebuttal of Some Traditional Views" in Philip ALSTON & Katarina TOMAEVSKI, **The Right to Food**, Martinus Nijhoff Publishers, Utrecht, 1984, pp. 97-110, at pp. 98-102.

¹⁰⁸ Grigorii Ivanovich, TUNKIN, **Theory of International Law**, translated by William E. BUTLER, Allen and Unwin, London, 1974, pp. 79-83.

¹⁰⁹ See SHUE, 1996, p. 7; Paul SIEGHART, **The International Law of Human Rights**, Clarendon Press, Oxford, 1983, pp. 125-127; YOKOTA, 1999, p. 205; van HOOFF, 1984, pp. 102-105.

¹¹⁰ BEDJAOUI has stated: "The right to development is a fundamental right, the precondition of liberty, justice and creativity. It is the alpha and omega of human rights, the first and the last human right, the beginning and the end, the means and the goal of human rights, in short it is the *core right* from which all the others stem." See note 66 above.

As to the alleged link between human rights and revolutions, it has been shown above that such a link is not realistic. In this context, it should be noted that accepting the above-mentioned link justifies the alleged differences between civil and political rights of the first generation and economic, social and cultural rights of the second. In fact, these alleged differences have been refuted so often by jurists, as shown above, that there is no need to repeat the arguments here. It is thus evident that there can be drawn no such precise distinctions between them.¹¹¹

If the universality, interdependence and indivisibility of all human rights are desired, they should be interpreted as suggesting that all human rights are protected with the same intensity, without giving priority, in principle, to some of them over others. The conclusion thus, should be that, even if human rights of different generations had been different from each other in nature, it would have provided no basis for justification of inequality between human rights regarding their protection.

B) Protecting Human Rights: Are Third Generation Rights Necessary?

The proponents of peoples' rights have stressed that what third generation human rights brought anew was the idea of protecting human rights at a collective level rather than at an individual one. However, as illustrated above, they failed to explain how the collectivities (one of the active subjects of these rights) could enjoy their third generation rights. In addition, they failed to illustrate the advantages of protecting their interests at a collective level rather than claiming, protecting and enjoying them individually. Next, it can be said that if it is evidenced that the third generation rights can be formulated as rights of individuals without losing their sight, peoples' rights, which could never gain clarity and general acceptance unlike individual rights, will be completely unnecessary. The author of this study prefers to observe the situation in real life, rather than in theoretical and abstract arguments, in order to make a conclusion about their necessity for the protection of human rights.

¹¹¹ To sum up, the main asserted differences are as follows:

- (i) While civil and political rights were enforceable, justifiable and of an absolute nature, economic, social and cultural rights were not;
- (ii) While civil and political rights were negative rights, or rights of abstention, economic, social and cultural rights were positive rights which the state would have to take appropriate positive action to promote;
- (iii) While civil and political rights were immediately applicable, economic, social and cultural rights were progressively implemented;
- (iv) While civil and political rights were legal rights, economic, social and cultural rights were programme rights;
- (v) While civil and political rights were cost-free, economic, social and cultural rights were costly.

The right to development, despite its having been claimed as a right of individuals, peoples and states, was seen more as a right of states and its individual aspect was largely neglected. The result is that, the right to development is today 'losing blood', or even dying, and it is debatable what it contributed to the protection of human rights apart from mere theoretical commitment in United Nations documents and other texts.

As for the right to a clean and satisfactory environment, the tendency in the course of development supports the conclusion that it can be formulated at an individual basis without losing its sight. Although it was expressed in the African Charter as a right of "all peoples", it was predominantly formulated in domestic law on an individual basis.¹¹² Moreover, there has already emerged a tendency to formulate it as a right of individuals in the international arena.¹¹³ That tendency towards individual-based formulation is preferred because

"...if we are to recognize environmental rights as human rights, the problem of identifying the standard case, which causes so much difficulty with collective rights, simply does not arise."¹¹⁴

Even the right to self-determination, which is the least controversial right in the area of peoples' rights, has been viewed as a right of individuals acting collectively.¹¹⁵ It may sound very challenging, but the difficulty mentioned above would not arise when the right to self-determination is perceived on that basis.

In brief, although there is not evidence showing that peoples' rights serve additional advantages to the protection of human rights compared with individual rights of the first and second generations, it is not unrealistic to conclude that – at least a number of – peoples' rights can be formulated as individual rights and it is better in practice in this way. This opens the necessity of third generation of peoples' rights to criticism.

¹¹² See notes 30 and 31 above.

¹¹³ See Draft Principles on Human rights and the Environment, United Nations Commission on Human rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Human Rights and the Environment*, Final Report of the Special Rapporteur, UN Doc. E/CN.4/Sub.2/1994/9 (6 July 1994), 74. Principle 2 of the Draft study is as follows: "All persons have the right to a secure, healthy and ecologically sound environment." Almost all of other environmental rights in this study have been formulated as rights of individuals, while principle 14 incorporated the phrase "indigenous peoples". See also of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights of 14 November 1988, which formulated the right to a healthy environment as an economic-social right in its Article 11.

¹¹⁴ MERRILLS, 1996, p. 32.

¹¹⁵ See DONNELLY, 1989, pp. 147-148.

V. CONCLUSION

Human rights law is at an early stage of its development. In its course of development, it is to (i) develop existing human rights and (ii) produce new ones. This study, in the light of that fact, sought to clarify whether third generation of peoples' rights is a consequence of that development.

The traditional understanding of human rights suggests that only the rights of individuals can be called human rights. Hence, if supporters of human rights of the third generation could have succeeded in formulating these rights as clear and concrete as the rights of single individuals, it would have been a revolution in the field of human rights, as it would change all accepted forms in that area. Most significantly, not only individuals, but also other entities, especially 'peoples' and 'states' could have enjoyed these rights.

Classifying human rights into different groups by considering their characteristics may be useful for educational or some other purposes. However, it should be kept in mind that there would be grey zones between different classifications. For example, every economic, social and cultural right should not necessarily be at the same time a positive right. Similarly, not every civil and political right is necessarily a right of abstention. More importantly, as it has been shown, not every civil and political right, for example, must be a right of first generation, or an economic, social and cultural right be a second generation right. Otherwise, should one at the same time now accept that that third generation rights are rights of peoples, there will never emerge an individual right again as it would be contrary to the evolution of human rights from rights of individuals towards rights of peoples. Such an idea can not be accepted.

This study sought to show that the basic concepts which third generation rights relied on were not new (such as the notion of 'solidarity') or were not well-defined (such as the word 'peoples' or 'subjects of third generation rights' and their responsibilities). Finally it revealed that whether we really need peoples' rights for a better protection of human rights is problematic and questionable. It is not unreasonable to say that they are not. That some of them may be formulated as individual rights, such as the right to environment, is already being stressed by a number of authors.

In fact, they are necessary for a happier world. No one can deny the necessity of development, for example, and that developed countries must provide assistance to the poor can not be deemed unnecessary, it can even be said that it is an obligation. Nonetheless, it can be argued that they are not matters to be solved by human rights law. Instead, they are contingent on different set of principles like international relations or politics. Hence, denial of third generation rights as human rights does not mean at the same time denial of, for example, the necessity of a world-wide development, or of a clean environment.

On the other hand, it would seem more optimistic and perhaps more realistic to consider rights of the third generation in an early stage of their development. In other words, they are still in the process of formation, and they might be better defined and protected in the future.